

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. FD 31676

PORT OF TILLAMOOK BAY RAILROAD—MODIFIED RAIL CERTIFICATE

Decided: July 26, 2016

In a decision served on June 1, 1990 (and corrected by decision served on June 4, 1990), the Port of Tillamook Bay (Port) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 C.F.R. § 1150.23 to operate rail service over the Tillamook Branch line between milepost 770.5, at Schefflin, Or., and milepost 856.08, at Tillamook, Or. (the Line).

On May 26, 2016, the Port of Tillamook Bay Railroad (POTB), a division of the Port and operator of the Line, filed a notice of its intent to terminate service over an 81.07-mile segment of the Line, between milepost 775.01, near Banks, Washington County, Or., and milepost 856.08, near Tillamook, Tillamook County, Or.¹ POTB states that it will continue to provide service on the portion of the Line that remains covered by the modified certificate, between milepost 774.0 and milepost 775.01.²

On June 17, 2016, the Salmonberry Trail Intergovernmental Agency (STIA) filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), for a portion of the Line between milepost 775.01 and milepost 856.06 (the Trail Use Segment). STIA has submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (ROW) as required pursuant to 49 C.F.R. § 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By letter filed on July 1, 2016, POTB indicated its willingness to negotiate interim trail use with STIA.

¹ POTB stated that its notice to terminate service would be effective July 28, 2016. By letter filed July 26, 2016, POTB states that it is extending the effective date of termination to August 31, 2016.

² In 2015, Portland & Western Railroad acquired 3.5 miles of the Line that was originally included in the modified certificate, between milepost 770.5 and milepost 774.0. Portland & W. R.R.—Acquis. & Operation Exemption—Port of Tillamook Bay, FD 35911 (STB served Apr. 1, 2015).

The Board has jurisdiction to impose interim trail use in a proceeding where a notice is filed under 49 C.F.R. § 1150.24 to terminate operations under a modified certificate. See Wis. & Calumet R.R.—Notice of Interim Trail Use & Termination of Modified Certificate, FD 30724 (Sub-No. 1) (ICC served Aug. 8, 1989); Sammamish Transp. Co.—Notice of Interim Trail Use & Termination of Modified Certificate, FD 33398 (Sub-No. 1) (STB served Feb. 26, 1998).

Because STIA's request complies with the requirements of 49 C.F.R. § 1152.29 and POTB agrees to negotiate for interim trail use, a NITU will be issued for the Trail Use Segment. STIA is free to negotiate an agreement during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Because POTB has already filed its termination notice under 49 C.F.R. § 1150.24, if no interim trail use agreement is reached, the modified certificate shall be considered terminated as of the end of the NITU negotiating period. Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes. See 49 C.F.R. § 1152.29(d)(2).

STIA has also requested the imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way to allow STIA to explore alternative public use of the Line, namely use as a recreational trail. In its July 1 letter, POTB states that it objects to the imposition of a public use condition because such a condition is available only in the course of abandonment proceedings, from which it is exempt. STIA's request for a public use condition will be denied. Public use conditions under 49 U.S.C. § 10905 are available under certain circumstances where the Board authorizes abandonment of a rail line, either by application or through an exemption. See 49 U.S.C. § 10905; 49 C.F.R. § 1152.28. However, under 49 C.F.R. § 1150.22, carriers operating under a modified certificate are exempt from the statutory requirement to seek Board authority to abandon the operated line. While granting a NITU is consistent with agency precedent, STIA has not shown that public use conditions are appropriate in modified certificate proceedings.

It is ordered:

1. The request for a notice of interim trail use under 16 U.S.C. § 1247(d) is accepted. STIA may negotiate with POTB for interim trail use for the Trail Use Segment for a period of 180 days from the service date of this decision and notice, until January 22, 2017.

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

3. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the trail sponsor's continuing to meet the financial obligations for the right-of-way described in paragraph 2 above.

4. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

5. If an interim trail use agreement is reached by January 22, 2017 (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no interim trail use agreement is reached, the modified certificate shall be considered terminated as of the end of the NITU negotiating period.

6. STIA's request for a public use condition is denied.

7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.